

RECEIVED

FEB 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
)	
Closed Captioning and Video)	MM Docket No. 95-176
Description of Video Programming)	
)	
Implementation of Section 305 of)	
the Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

COMMENTS OF HOME BOX OFFICE

HOME BOX OFFICE, a Division of
Time Warner Entertainment
Company, L.P.

Benjamin J. Griffin
Kathleen A. Kirby
REED SMITH SHAW & McCLAY
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9223

Its Attorneys

February 28, 1997

No. of Copies rec'd 046
List ABCDE

TABLE OF CONTENTS

I.	STATEMENT OF INTEREST	2
II.	SUMMARY	4
III.	TRANSITION RULES FOR NON-EXEMPT NEW PROGRAMMING	5
	A. "New Programming" Should Be Defined As First Publicly Distributed After August 8, 1997	5
	B. Captioning Of Non-Exempt New Programming Should Be Phased In Over A Ten Year Period	7
	C. The Maximum Benchmark For Captioning Of Non- Exempt New Programming Should Be 80 Percent	9
	D. The Commission Should Not Adopt An Expedited Implementation Schedule For Certain Types Of Programming	12
	E. Percentages Of Programming That Must Be Captioned Should Be Applied To MVPDs On A System-Wide Basis	13
	F. Captioning Rules Must Be Crafted So As Not To Impede the Development of New Technology	15
IV.	TRANSITION RULES FOR NON-EXEMPT LIBRARY PROGRAMMING	15
	A. Library Programming Should Be Defined As First Publicly Distributed Before August 8, 1997	15
	B. The FCC Should Not Set A Quantitative Benchmark For Closed Captioning Of Library Programming	17

V.	EXEMPTIONS	20
A.	Interstitial Material Should Be Exempt From Captioning Requirements	20
B.	Live Music Performances Should Be Exempt From the Captioning Requirements	21
C.	The Commission Should Clarify Its Rules Governing Exemptions For Foreign Language Programming	23
D.	The Commission's Rules Should Include A Procedural Mechanism Through Which Individual Service Providers or Owners of Programming May Seek An Exemption From The Closed Captioning Requirements	24
E.	Existing Contracts	26
VI.	THE COMMISSION SHOULD REFRAIN FROM IMPOSING NON-TECHNICAL STANDARDS FOR QUALITY AND ACCURACY ..	27
VII.	ENFORCEMENT AND COMPLIANCE REVIEW	28
VIII.	CONCLUSION	29

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Closed Captioning and Video)	MM Docket No. 95-176
Description of Video Programming)	
)	
Implementation of Section 305 of)	
the Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

COMMENTS OF HOME BOX OFFICE

Home Box Office ("HBO"), a division of Time Warner Entertainment Company, L.P. ("TWE"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking ("Notice"), released in the above-captioned proceeding on January 17, 1997.¹ The Commission's Notice seeks comment on proposed rules and implementation schedules for captioning of video programming, as required by Section 305 of the Telecommunications Act of 1996 ("1996 Act").² Section 305 added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended, 47 U.S.C. § 713, which requires the Commission to prescribe such rules by August 8, 1997.

¹ FCC 97-4, released January 17, 1997.

² Pub.L. 104-104, 110 Stat. 56 (1996).

I. STATEMENT OF INTEREST

HBO is a leading supplier of pay television programming in the United States. HBO distributes multiple feeds ("multiplex") of two premium programming services, HBO and Cinemax.³ The HBO and Cinemax services currently are distributed to approximately 32 million subscribers. The HBO services are distributed by means of a wide range of distribution technologies, including cable television systems, SMATV systems, wireless cable systems, telephone company facilities, C-band satellites ("TVRO"), medium power Ku-band satellites and high power direct broadcast satellites.

As detailed in comments submitted in response to the Commission's *Notice of Inquiry* in this proceeding,⁴ HBO devotes significant resources to closed captioning of its HBO and Cinemax programming services. In 1995, HBO established its own internal closed captioning department with the goal of captioning more HBO programming.⁵ The overwhelming portion of

³ The feeds of the HBO service are HBO (east, west, mountain), HBO 2 (east, west, mountain) HBO 3 (east, west), and HBO Family (east, west). The feeds of the Cinemax service are Cinemax (east, west, mountain) and Cinemax 2 (east, west, mountain).

⁴ *Closed Captioning and Video Description of Video Programming*, Notice of Inquiry, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996) ("NOI").

⁵ The captioning of live programming requires experts with very specialized skills. Accordingly, HBO continues to rely on outside vendors to caption its live presentations.

HBO's closed captioning initiatives has been funded by the company. HBO prioritizes the use of its closed captioning resources and, using a cost/benefit analysis, devotes those resources to the programs that are likely to serve the largest audiences. In this manner, the programs that have the potential to appeal to the largest number of hearing impaired viewers are captioned first.

The vast majority of programming offered to HBO and Cinemax subscribers is closed captioned. In 1996, almost 86% of the complete programming schedule on the HBO program service was captioned, and 96% of the HBO prime time schedule was captioned. For Cinemax, approximately 58% of the complete schedule, and 72% of the Cinemax prime time schedule, respectively, were captioned.

The majority of HBO programming that is not captioned consists of previously exhibited titles (i.e., library product) which are carried primarily on the Cinemax service. HBO traditionally has allocated its resources to captioning the programming that will be watched by the most consumers, therefore reaching the largest number of hearing impaired consumers. As a result, the great majority of HBO's non-captioned product is carried in low viewing hours, i.e., non-prime time. It is primarily the older, previously released movie titles in the library of HBO's Cinemax service that are not closed captioned.

II. SUMMARY

Maximizing access to programming for the hearing impaired is a legitimate and important goal, and, as described above, one which HBO has expended considerable resources to achieve. In carrying out the responsibilities with which the Commission is charged by the 1996 Act, HBO urges the Commission to balance carefully the benefits of increased accessibility against the economic realities faced by those who will bear the responsibility for meeting closed captioning requirements and the impact of these economic realities on other consumers. As set forth below, regulation of closed captioning has the potential to impact viewers negatively through rising costs and fewer programming options.

As a general matter, therefore, in crafting its rules, the Commission not only should look to promote the accessibility of video programming to persons with disabilities, regardless of the delivery mechanism used to reach consumers,⁶ but also keep clearly in mind that Congress did not intend through the regulation of closed captioning to inhibit the production and distribution of programming and thereby restrict the diversity of programming available to all viewers.⁷

⁶ H.R. Report 104-204, 104th Cong., 1st Sess. ("House Report") (1995) at 113-114.

⁷ Id. at 114; H.R. Report 104-458, 104th Cong., 2d Sess. ("Conference Report") (1996) at 183.

HBO believes that many of the proposals set forth in the Commission's *Notice* are consistent with this intent to maximize the amount of programming containing closed captioning, while creating appropriate exemptions and reasonable time tables to account for the relevant technical and cost issues involved. HBO submits, however, that certain of the rules should be refined to reflect more accurately the economic realities surrounding the production and distribution of programming. HBO will address below the majority of the issues raised by the Commission. Among other refinements, HBO submits that: (1) the distinction between "new" and "library" programming should be based on when the programming is first publicly distributed; (2) the Commission should implement a ten year transition schedule for the phase in of captioning of non-exempt new programming with an 80% captioning maximum; (3) the Commission should avoid quantitative benchmarks for the captioning of library programming; and (4) the Commission should create general exemptions for interstitials and live music performances.

III. TRANSITION RULES FOR NON-EXEMPT NEW PROGRAMMING

A. "New Programming" Should Be Defined as First Publicly Distributed After August 8, 1997

Section 713(b) directs the Commission to adopt rules to ensure that video programming "first published or exhibited" after the effective date of such regulations is fully accessible through the provision of closed captions. The legislative history of the 1996 Act confirms that Congress

intended to distinguish between newly published and previously published material in its efforts to provide the hearing impaired with increased access to video programming.

Given Congress' stated concern that the rules ultimately adopted by the Commission take into account relevant technical and cost issues that will impact program providers, thus preserving the diversity of programming available to all viewers, HBO submits that the Commission may reasonably effect Section 713(b)'s mandate by crafting rules that differentiate between "new" and "library" programming on the basis of when the work was first publicly distributed in its original form in any medium. "New" programming, therefore, would be defined as programming that is first publicly distributed in its original form in any medium after the effective date of the rules, on or about August 8, 1997.

The creation of such a bright line test will accommodate both compliance and enforcement of the Commission's closed captioning rules. The date of initial distribution is readily available in media sources such as BIB Television Programming Source Books, TV Guide, and other similar publications, and such dates can be stipulated to in program licensing contracts. Further, using the initial distribution date would eliminate the uncertainties of whether a program is classified as "new" as a result of reformatting. Previously captioned programming must be recaptioned as it enters new distribution streams, because of reformatting. In defining the scope of programming that constitutes new programming as described

above, reformatting a previously published or exhibited program for a different distribution medium, or adding introductory filler or other interstitial matter, would not transform the programming into new programming if it were first distributed or exhibited prior to the effective date of the Commission's closed captioning rules.

**B. Captioning Of Non-Exempt New Programming
Should Be Phased In Over A Ten Year Period**

HBO concurs that the rules governing captioning of non-exempt new programming should give program providers, owners and producers significant discretion in making decisions as to what will be captioned and when. As the Commission suggests, program providers, owners and producers have a more direct link to the consumer, and are better able than the Commission to determine how best to utilize the resources available for captioning.

Given HBO's in-house captioning capabilities and the relatively high percentages of captioned programming currently available on the HBO services, HBO would be comfortable with an eight year transition schedule. Those networks, however, which currently air a greater percentage of uncaptioned programming may require a longer period in which to implement the closed captioning requirements. As discussed below, a variety of factors suggest that the ten year schedule alternatively proposed by the Commission likely would prove more realistic for most program owners, producers and distributors.

In general, the Commission correctly recognizes that certain limitations, such as the number of available captioners and captioning services, the costs of captioning, and the effect that immediate implementation of mandatory captioning rules might have on the continued availability of certain types of video programming, dictate against more specific and/or immediate deadlines than those proposed by the Commission for captioning of non-exempt new programming. Program owners, producers, and distributors will be faced with difficult decisions concerning how best to allocate limited captioning resources, and should be afforded sufficient time to make the necessary adjustments.

For example, under pre-existing agreements which do not provide for closed captioning by the producer, a great percentage of "new" programming likely will be produced without captions. To comply with closed captioning requirements, each licensee would be forced to caption this new programming. The resulting multiple, inefficient captioning efforts will place a duplicative burden on various segments of the television distribution system. For some period of time, then, limited captioning resources necessarily will be devoted to multiple captioning of single programs, rather than to increasing the overall number of captioned program titles available. Over a ten year period, however, as pre-existing agreements run their course and new contractual arrangements which contemplate captioning responsibilities take their place, parties will be able to allocate captioning

resources more efficiently, and reach higher percentage benchmarks for closed captioning of programming.

Similarly, depending upon consumer demand, it may be wiser for a certain portion of limited closed captioning resources to be devoted to the captioning of library, rather than new, programming. A ten year transition period for new programming would afford those parties in the distribution chain sufficient flexibility to make that decision.

**C. The Maximum Benchmark For Captioning Of
Non-Exempt New Programming Should Be 80 Percent**

Not all of the difficulties which may render closed captioning of a particular program impossible or infeasible will be countered simply by virtue of a gradual phase-in of the captioning requirements for new programming. A multi-year transition period may allow enough time, for example, for the development of captioning facilities or the hiring and training of personnel necessary to caption the bulk of new programming. A phase-in of the captioning rules, however, will not solve the insurmountable problems created when a much-anticipated, scheduled new program is received at the last minute, uncaptioned. Nor will it change the cost/benefit analysis which would suggest that captioning a particular new program which airs solely in periods of low viewership simply cannot be justified.

The fundamental problem lies in the Commission's proposed requirement that 100 percent of new programming ultimately be captioned. This 100 percent captioning requirement leaves no

room for program providers to make informed decisions that programs such as those alluded to above would serve the needs of certain viewers, and should be aired regardless of whether or not they are captioned. HBO submits that an 80% captioning maximum would better serve the public interest, and that the Commission should revise its rule accordingly.

An 80% captioning maximum would accommodate circumstances where, for instance, networks receive from their producers uncaptioned programs just prior to scheduled broadcast. HBO, for example, often receives episodes of "The Larry Sanders Show" and other programs shortly before airing. Similarly, HBO traditionally has aired a package of early round Wimbledon tennis matches. These programs are produced overseas, where HBO does not have captioning facilities, and transmitted back to the United States just prior to airing. Although HBO sometimes engages in last-minute captioning of these programs, the quality of such captioning is far inferior to that of the captioning created and inserted by HBO given sufficient time. In some circumstances, a programmer such as HBO might choose to forego the inferior captioning.

While HBO's captioning resources afford HBO the ability to caption programming very quickly, the record in this proceeding demonstrates that HBO is one of a few networks with the ability to provide captioning given a very tight time frame. The majority of program networks dealing with last-minute uncaptioned programming would be faced with three unattractive options: (1) obtain an emergency waiver from the

Commission (an unlikely prospect given the time frame); (2) cancel the scheduled telecast and air the program at a later date (disappointing the audience and/or perhaps destroying the program's timeliness); or (3) decide not to air the program. An 80% captioning maximum, on the other hand, provides the flexibility for a limited amount of such programming to be aired without captions.

The 80% captioning maximum also would accommodate circumstances where a programmer might decide to air a certain new program solely in periods of low-viewership, such as overnight. Often, the economic burden of captioning such programs far outweighs the benefits. More specifically, because of their limited viewership, these programs typically are obtained at a relatively low licensing cost. The additional cost of captioning such programming, however, may be significant enough to change licensing decisions. Under a 100% captioning requirement, such programs would likely be dropped from the schedule, regardless of any demand or loyal following, thus reducing the diversity of programming available to all viewers.

Finally, the increased administrative costs associated with a 100% captioning requirement, whether because of the necessity to secure waivers or to contract for closed captioned programming, may be material enough to result in certain programs not being produced at all. Again, such a result is inconsistent with Congressional intent. An 80%

captioning maximum for new programming would alleviate some of that burden, better preserving programming diversity.

In light of the above, HBO submits that a requirement that 100% of new programming be captioned would disserve the public interest by: (1) undermining program diversity and/or (2) straining the Commission's resources as the agency becomes inundated with waiver requests. HBO urges the Commission not to attempt this type of micromanagement, but to leave sufficient flexibility for programmers to present a limited amount of new programming even if it is uncaptioned. A captioning maximum of 80% would serve this purpose, alleviating the potential for a significant drain on the Commission's resources, preserving program diversity and serving the needs of the many, while still ensuring that viewers with hearing disabilities have access to video programming. The Commission's percentage increments for compliance with its captioning rules could be adjusted accordingly, e.g., 25% after three years, 50% after five years, 70% after seven years, 80% after ten years.

**D. The Commission Should Not Adopt
An Expedited Implementation Schedule
For Certain Types Of Programming**

At Paragraph 42 of the Notice, the Commission seeks comment on whether there are certain types of programming, (i.e., live local news or public affairs programming) for which an earlier implementation schedule should be adopted. Consistent with its stated intent to leave programmers with significant discretion as to when and what to caption, HBO

submits that the Commission should not create an artificial deadline for the captioning of particular types of programming. Marketplace forces have proven to be a significant motivator to the provision of closed captioning, and they will continue to be. Programming which is most desirable will be captioned first. For example, given its value to viewers, and without closed captioning rules, virtually all network news is closed captioned, and 81.5% of television stations caption their local news. Notice at ¶ 17. Programmers will continue to sense demands for closed captioning, and respond with attractive and cost-effective solutions that will ensure that the hearing impaired have access to a full range of programming, including important information programming.

**E. Percentages Of Programming That
Must Be Captioned Should Be Applied
To MVPDs On A System-Wide Basis**

With respect to MVPDs, the Commission proposes to apply the percentages of programming that must be captioned on a system-wide basis. HBO concurs with this approach. As the MVPD is the entity the Commission proposes be held responsible for compliance with closed captioning requirements and the party subject to the Commission's jurisdiction, such an approach seems logical.

Moreover, during the transition period, application of percentages of programming that must be captioned on a system-wide basis will provide MVPDs with more flexibility in determining which program networks they will carry. For

example, under the Commission's proposal, a cable operator would be required to transmit a total of 25% of all the new, non-exempt programming on its cable system with closed captions by the end of the first benchmark period. Thus, a cable operator could choose to transmit one particular cable network completely captioned, while transmitting three others with no captioning. Application of percentages on a system-wide basis would eliminate the need for the cable operator to drop networks which, for whatever reason, are not able to attain the required closed captioning percentages individually, preserving program diversity and affording these networks sufficient time to increase the amount of closed captioned programming offered.

Finally, the determination that a percentage requirement has been met should be based on the amount of programming that has been aired over one year's time on a calendar year basis. As the Commission recognizes, there may exist legitimate reasons why more captioned programming airs in certain weeks or months than in others. An annual assessment, conducted as of the end of each calendar year, would afford programmers sufficient flexibility to schedule programming in response to consumer demand. Moreover, any reporting or record keeping requirements imposed by the Commission would be less burdensome if the records were maintained and updated on an annual, calendar year, basis.

F. Captioning Rules Must Be Crafted So As Not To Impede The Development Of New Technology

The Commission recognizes correctly that, as distribution technologies increasingly convert to digital transmissions, alternative means may become available for captioning programming. HBO concurs that the captioning rules should be designed to take into account the technological changes that may take place as a result of digital conversion and urges the Commission to ensure that the rules do not impede the development of new technologies.

The Commission, therefore, should craft rules which have as their ultimate objective the textual display of the aural portion of a program, regardless of the method utilized to create such a display. In other words, the rule should focus on the end, not the means. For example, while closed captioning currently is transmitted in line 21 of the vertical blanking interval, future technology may become available that exhibits the captions on screen in a different manner. If a textual display of the audio can be achieved using alternative means, the Commission should not prohibit the use of this technology, or others which achieve the same result, provided that access to the resulting captions does not impose significant additional costs on the end-user.

IV. TRANSITION RULES FOR NON-EXEMPT LIBRARY PROGRAMMING

A. Library Programming Should Be Defined As First Publicly Distributed Before August 8, 1997

As stated above, it is important for the Commission's rules to distinguish precisely between "new" and "library"

programming. For the reasons set forth in Section III. A., *supra*, "library" programming should be defined as programming first publicly distributed in its original form in any medium before the effective date of the Commission's rules, on or about August 8, 1997.

Additionally, HBO submits that one year from the date a "new" (as defined by the Commission) program is first exhibited on a particular channel or network, that new program should move from the network's new programming category to the network's library programming category. Thus, if a "new" program is re-run one year or more after its first exhibition on a network, it should be considered a "library" product in the re-run.

As a general matter, it would be illogical for all programming first publicly distributed after August 8, 1997 to be categorized as "new" programming perpetually. If that were the case, programmers would have a natural disincentive to caption additional new program titles. Instead, they could retain captioned "new" programming for a prolonged period in order to meet the captioning requirements regardless of consumer demand.

Under HBO's proposal, each network would classify its "new" programming as new or library depending upon when re-runs of the programming occurred on that network. It would be easier for program networks to maintain records of the dates of their exhibition of products rather than referring to some outside source for release dates.

**B. The FCC Should Not Set A Quantitative Benchmark
For Closed Captioning Of Library Programming**

HBO firmly believes there is no justification for broad requirements mandating the closed captioning of any benchmark percentage of previously published programming.

First, given the mandate to caption new programming, as existing library product is replaced with more recently produced programming, much of that newer product will have been captioned.⁸ An increasing percentage of older, or "library" product in the programming schedule, therefore, will become captioned. Accordingly, the fundamental goal of the captioning legislation which is to increase the total amount of captioned programming that is available, will be achieved automatically over time as a by-product of the Commission's efforts with regard to new programming.

For example, HBO, by and large, devotes the majority of its closed captioning resources to the captioning of new programming. As a result, the amount of closed captioning of all programming on the HBO service increased from approximately 55 percent of the schedule in 1990⁹ to

⁸ In HBO's experience, various segments of the programming industry are cooperating to aggregate their captioning resources for maximum consumer benefit. For example, if HBO captions a previously published theatrical title that it has licensed, it offers the captioning, for a nominal fee, to the program owner, who may then make the captioning available to other licensees.

⁹ In Comments submitted in response to the Commission's NOI, HBO stated that the amount of closed captioned programming on the HBO service in 1990 was 63 percent.

Continued on following page

approximately 86 percent of the schedule in 1996. Thus, concerted efforts to caption new programming increases naturally the overall percentage of programming accessible to the hearing impaired.

The following example is illustrative of how marketplace forces, and the cycling of "new" product into the library category, has worked to increase the percentage of library product that is captioned: In May of 1986, 10% of the library product scheduled on the HBO programming service was closed captioned. Comparatively, in May of 1996, 70% of the library product scheduled on the HBO programming service was captioned. For Cinemax, 0% of the library product scheduled in May of 1986 was captioned. By May of 1996, the proportion of library product scheduled in the Cinemax service that was captioned had grown to 54%.¹⁰

HBO has had a similar experience with the stereo audio enhancement. In 1990, approximately 61 percent of the HBO program service was delivered with stereo sound. By 1996, the stereo enhancement was available in approximately 91 percent of the HBO program service. In other words, as new product was created with the stereo audio enhancement, and this new

Continued from previous page

Upon further analysis, HBO has determined that the number should actually be 55 percent.

¹⁰ For purposes of this example "library product" is defined as programs that had aired previously on the HBO and Cinemax services at least one year before the May, 1986 and May, 1996 sample periods specified above.

product became library product over time, the overall percentage of stereo programming available on the HBO program service increased. The same will prove true for closed captioned programming.

Retroactive captioning requirements for library material would be impractical and expensive, requiring the captioning of libraries that may contain thousands of titles. Given the need to pass through these costs, it is clear that broadcasters and other video programming providers simply would not purchase older, non-captioned programs, resulting in reduced diversity of programming available to the public. To the greatest possible extent, the Commission should rely on market forces to stimulate the captioning of library product at the rate at which the American public -- through their own choices -- deems captioned product to be necessary or desirable.

Finally, Commission forbearance from setting a quantitative benchmark for the captioning of library product is consistent with the Congressional intent as stated in the 1996 Act. The legislation provides that the Commission should promulgate rules which "maximize the accessibility" of previously published programming. Congress clearly stated its intent that no captioning requirement should result in previously published programming not being aired because of the cost of captioning. By affording program producers and distributors wide latitude with respect to the captioning of library product, the Commission will ensure that vintage

programming will not be archived before its time, thus reducing the amount and variety of programming options available to all viewers. Further, the Commission will avoid the debilitating impact a quantitative benchmark would have on services that rely heavily on previously published product (e.g., TNT, The Family Channel).

In view of the above, it is unnecessary for the Commission to require completion of the captioning task for a certain percentage of previously published titles by a date certain. Should the Commission determine that its legislative mandate to ensure that video programming providers or owners "maximize the availability" of previously published programming warrants further accountability, the Commission could revisit this issue in three to five years time to determine if the marketplace is working as HBO believes it will.

V. EXEMPTIONS

A. Interstitial Material Should Be Exempt From Captioning Requirements

Interstitial material, meaning programs fifteen minutes or less in length, should be exempt from mandatory closed captioning. The interstitial material on the HBO and Cinemax networks consists of a high volume of promotional material that is programmed between feature presentations.

Because of its promotional nature, much of the interstitial programming is produced within a tight time-frame and has an extremely short shelf life. Further, interstitial

material usually contains on-screen graphics, or "slates," that provide the pertinent information that is contained in the program audio. In other words, in most instances, hearing impaired individuals have access to the pertinent information about the program being promoted, even though the information is provided through graphics rather than through closed captioning.

Additionally, interstitials are, by and large, secondary sources of information about upcoming program events. Television listings and promotional materials are readily available in the newspapers, or through program guides, and constitute the primary sources of the information contained in the interstitials. Requiring captioning of interstitials, therefore, will not make accessible to the hearing impaired information that is otherwise inaccessible.

Thus, the benefits of captioning interstitials are minimal, if any, while the burdens, given the costs, quick turnaround, and the life of the product, are substantial. Interstitials, therefore, should be generally exempt from the captioning requirements adopted by the Commission.

**B. Live Music Performances Should Be Exempt
From The Captioning Requirements**

High quality captioning of "live" programming requires highly skilled captioners which are not available today in sufficient numbers to respond to a broad requirement that live programming be captioned. Based on its considerable experience with "live" music performances, HBO submits that

such performances should be exempt from the Commission's captioning requirements.

As a preliminary matter, HBO submits that the Commission must define precisely what constitutes a "live" performance. With respect to music events, HBO submits that the telecast should be considered "live" if it occurs within 24 hours after the actual event.

HBO typically distributes "live" concerts from all over the world. These performances may involve considerable time differences. As was the case when HBO produced a Whitney Houston concert "live" from South Africa, given the sixteen hour time difference, the concert was not performed and telecast simultaneously. This "live" performance, therefore, actually involved a time shift to accommodate prime time viewing in the United States.

The logistics of packaging and airing this type of music event do not lend themselves to captioning. Because of its in-house captioning facilities, HBO has been able to caption some of these performances, albeit with captions of substantially lower quality than is HBO's norm. As a general matter, however, HBO believes it is reasonable to have a general closed captioning exemption for these "live" music events.

In most instances, the live performances on HBO's services are repeated several times during a month. On the repeat performances, there is sufficient time for high quality, precise captioning to be inserted consistent with the